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February 20, 2004

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Honorable Deborah Taylor Tate, Chairman
c/o Sharla Dillon, Dockets and Records Manager
Tennessee Regulatory Authority
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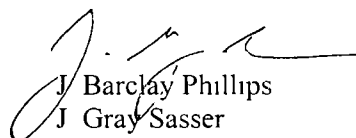
RE Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and the Tennessee Telecommunications Act of 1995 for Rates, Terms, and Conditions of its Interconnection Agreement with BellSouth Telecommunications, Inc

Dear Chairman Tate

Level 3 Communications, LLC ("Level 3") encloses for filing an original and thirteen (13) written copies of its Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Tennessee Telecommunications Act of 1995 for the Rates, Terms, and Conditions of its interconnection agreement with BellSouth Telecommunications, Inc In addition, please find a check in the amount of \$25 00 for the filing fee

An extra copy of the Petition for Arbitration is enclosed Please date-stamp the extra copy and return it to the individual delivering this filing A copy of this petition has been served on BellSouth Telecommunications, Inc Please do not hesitate to contact the undersigned should you have any questions concerning this filing

Sincerely,


J Barclay Phillips
J Gray Sasser

Petition of LEVEL 3 COMMUNICATIONS, LLC
For Arbitration Pursuant to Section 252(b)
of the Communications Act of 1934, as
amended by the Telecommunications Act of 1996,
and the Tennessee Telecommunications Act of 1995
for Rates, Terms, and Conditions of its Interconnection
Agreement with BellSouth Telecommunications Inc

- I. Transmittal Letter**
- II. Level 3 Communications, LLC's Petition for Arbitration**
- III. Exhibit A – Interconnection Request Letter**
- IV. Exhibit B – Proposed Interconnection Agreement**
- V. Exhibit C – Excerpts from Existing Agreement and Dec. 24, 2003
Amendment**

cc Richard E Thayer, Esq
Director - Intercarrier Policy
Level 3 Communications, LLC

Roger A Briney, Esq
Davis Wright Tremaine LLP
Counsel for Level 3 Communications, LLC

Guy M Hicks
BellSouth Telecommunications, Inc

Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

In Re:	Petition of)	
	LEVEL 3 COMMUNICATIONS, LLC)	Docket No. _____
	For Arbitration Pursuant to Section)	
	252(b) of the Communications Act of)	
	1934, as amended by the)	
	Telecommunications Act of 1996, and the)	
	Tennessee Telecommunications Act of)	
	1995, for Rates, Terms, and Conditions)	
	of its Interconnection Agreement with)	
	BellSouth Telecommunications, Inc.)	

PETITION FOR ARBITRATION

Level 3 Communications, LLC (“Level 3”) by its undersigned attorneys, pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”), 47 U S C § 252(b), and the Tennessee Telecommunications Act of 1995, T C A §65-4-104 et seq , petitions the Tennessee Regulatory Authority (“TRA” or “Authority”) for arbitration of the unresolved issues arising out of the interconnection negotiations between Level 3 and BellSouth Telecommunications, Inc (“BellSouth”) (collectively, the “Parties”) Level 3 requests that the Authority resolve each of the issues identified in this Petition by ordering the Parties to incorporate Level 3’s position into an interconnection agreement

In support of this Petition, and in accordance with Section 252(b) Level 3 states as follows

I. THE PARTIES

1 Level 3, a telecommunications provider as defined by the Act, is a facilities-based competitive local exchange carrier (“CLEC”) Level 3 is a Delaware limited liability company with its principal place of business at 1025 Eldorado Boulevard, Broomfield, Colorado, 80021

Level 3 is authorized to provide all forms of competitive local exchange and interexchange telecommunications services throughout the State of Tennessee¹

2 All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals

Richard E Thayer, Esq
Director – Intercarrier Policy
Level 3 Communications, LLC
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¹ Level 3 Communications, LLC was granted an amended certificate of public convenience and necessity by the Tennessee Regulatory Authority providing it with authority to provide competitive local exchange and interexchange telecommunications services throughout the state of Tennessee. *In re Application of Level 3 Communications LLC to Expand its Certificate of Convenience and Necessity to provide Facilities-based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket 02-00230, Order dated June 28, 2002.

3 BellSouth is an incumbent local exchange carrier ("ILEC"), authorized to provide local exchange services by the Tennessee Regulatory Authority in the portions of the State of Tennessee where it operates. Within this operating territory, BellSouth has at all relevant times been an ILEC as that term is defined in Section 251(h) of the Act, 47 U.S.C. § 251(h).

4 During the negotiations with BellSouth, the primary contacts for BellSouth have been

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and

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Room 34S91
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John.Hamman@BellSouth.com
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II. THE INTERCONNECTION NEGOTIATIONS AND RESOLVED ISSUES

5 Level 3 and BellSouth began negotiations toward a successor agreement on September 13, 2003. A copy of the letter memorializing the starting date of negotiations is attached as Exhibit A. The arbitration window opened on January 26, 2004 and closes February 20, 2004. This Petition is timely filed within the arbitration window. In an effort to reach a mutually agreeable successor to their expiring interconnection agreement, Level 3 and BellSouth have negotiated in good faith on numerous occasions and exchanged correspondence with respect to the proposed contract. While the Parties have reached agreement on many provisions

of the contract, some issues remain in dispute. The Parties have not resolved many differences over contract language and policy issues, some of them substantial and critical to Level 3's business plans, some of them important to ensure that the agreement is commercially reasonable and in compliance with applicable law, and some of them textual and definitional clarifications and reconciliations. Thus, Level 3 seeks arbitration of the remaining disputes with BellSouth. Level 3 will continue negotiating with BellSouth in good faith after this Petition is filed, and hopes that many of these issues can be resolved prior to any arbitration hearing. To facilitate resolution of these issues, Level 3 will participate in Authority-led mediation sessions, if available.

6 Level 3 has attached hereto as Exhibit B the interconnection agreement with the comprehensive redlines showing those matters that are at issue here. The agreement includes both the outstanding unresolved issues and the many new contract provisions on which the Parties have already reached agreement. Text appearing in Exhibit B in normal type represents those matters on which Level 3 understands the Parties to be in agreement.² The bold text in Exhibit B represents Level 3's proposals, the bold, italicized text represents BellSouth's proposed language.

7 The Parties have resolved all issues and negotiated contract language to govern the Parties' relationship with respect to collocation, numbering, disaster recovery, rights-of-way, performance measurements, and pre-ordering, ordering, provisioning, maintenance and repair. These negotiated portions of the Agreement are included in Exhibit B. Except for the dispute concerning rates for ordering charges for interconnection facilities and the exchange of Section

² To the extent that BellSouth asserts in any response that any of the matters that Level 3 understands to be and has identified as resolved are in fact open issues, Level 3 reserves the right to present its position with respect to such matters as part of this arbitration.

251(b)(5) traffic (Enhanced Applications Traffic as defined herein) and ISP-bound Traffic, the Parties have also agreed to the rates BellSouth generally offers all competitive local exchange carriers³

III. JURISDICTION

8 Under the Act, parties negotiating for interconnection, access to unbundled network elements, or resale of services within a particular state may petition the state commission for arbitration of any unresolved issues during the 135th to the 160th day of such negotiations 47 U S C § 252(b) The statutorily prescribed period for arbitration expires on February 20, 2004 Accordingly, Level 3 files this Petition with the Authority on this date to preserve its rights under Section 252(b) of the Act and to seek relief from the Authority in resolving the outstanding disputes between the Parties Pursuant to Section 252(b)(4)(C) of the Act, this arbitration is to be concluded on or about June 13, 2004.

IV. APPLICABLE LEGAL STANDARDS

9 This arbitration must be resolved under the standards established in Sections 251 and 252 of the Act, the rules adopted and orders issued by the Federal Communications Commission ("FCC") in implementing the Act, the provisions of the Tennessee Telecommunications Act of 1995 and the applicable rules and orders of the Authority Section 252 of the Act requires that a state commission resolving open issues through arbitration

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251, [and]

³ Level 3 has accepted the BellSouth-proposed rates on the basis of BellSouth's representation that these rates are the rates generally offered to all competitive LECs and consistent with the Authority's orders approving BellSouth's rates To the extent Level 3 determines that the rates are not those generally offered to other competitive LECs, or are inconsistent with the rates ordered by this Authority Level 3 reserves its right to contest such rates

- (2) establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252]

10 The Authority should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the requirements of Sections 251(b) and (c) and 252(d) of the Act

V. UNRESOLVED ISSUES

This portion of the Petition is divided into three sections. The first section summarizes the most substantive, critical business issues that Level 3 categorizes as “Tier I Issues.” The second section summarizes the remaining substantive issues that must be resolved in order for the agreement to be consistent with applicable law, commercially reasonable, and certain in effect. Level 3 categorizes these issues as “Tier II Issues.” For the Tier I and II Issues, Level 3 provides (i) a list of the unresolved issues, referencing the section numbers in Exhibit B hereto for each provision at issue, (ii) a summary of what Level 3 understands to be each Party’s position with respect to each such issue (where known), including, where applicable, a statement of the last offer made by each Party, and (iii) a brief statement for each issue describing the legal and/or factual basis supporting Level 3’s proposed resolution and the conditions necessary to achieve the proposed resolution. Finally, Level 3 summarizes in the last section those issues in the Agreement that must be reconciled so that the Agreement is clear, consistent, commercially reasonable and consistent with applicable law. For these “Tier III Issues,” Level 3 references the section numbers in Exhibit B hereto for each provision at issue and briefly summarizes each Party’s position.

A. TIER I ISSUES

In this section of its Petition, Level 3 asks the Authority to provide operating certainty concerning the exchange of certain traffic between two common carriers, BellSouth and Level 3

These important operational issues relate to whether BellSouth can shift its originating transport obligations to Level 3 and how the Parties will compensate each other for the exchange of traffic

The FCC “rules of the road” for interconnection permit Level 3 to select a single interconnection point per Local Access and Transport Area (“LATA”) and require BellSouth to deliver traffic originated by its own customers to that interconnection point at no charge to Level 3.⁴ While BellSouth has nominally agreed to a single interconnection point per LATA, its “agreement” is really a fig leaf that cannot hide its attempts to escape its originating transport responsibilities. Throughout Attachment 3, BellSouth seeks to undermine this “agreement” by imposing costs on Level 3 for transporting traffic that is originated by BellSouth’s own customers to the interconnection point. BellSouth also seeks to avoid its obligation to

⁴ See, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, at ¶¶ 1042, 1062 (1996) (“*Local Competition Order*”), *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, at ¶ 78 (rel. Jun. 30, 2000) (“*Texas 271*”), *TSR Wireless, LLC et al. v. U.S. West Communications, Inc., et al.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order (rel. Jun. 21, 2000) (“*TSR Wireless*”), *aff’d, Qwest Corp. et al. v. FCC et al.*, 252 F.3d 462 (D.C. Cir. 2001), *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, at ¶¶ 72, 112 (rel. April 27, 2001) (“*Intercarrier Compensation NPRM*”), *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, at ¶ 52 (Wireline Comp. Bureau, rel. July 17, 2002) (“*Federal Arbitration Order*”). Five federal Circuit Courts of Appeals have also upheld the FCC’s “rules of the road” for interconnection. *Mountain Comms. Inc. v. FCC*, No. 02-1255 slip op. at 10 (D.C. Cir. Jan. 16, 2004) (holding that FCC decision requiring CLEC to pay for transporting ILEC traffic to a single POI was arbitrary and capricious in that it directly contradicted, without explanation, prior FCC decision that ILEC could not charge for delivering traffic to single POI), *Southwestern Bell Tel. Co. v. Pub. Utils. Comm’n of Tex.*, 348 F.3d 482, 485 (5th Cir. 2003) (affirming lower court grant of summary judgment that CLEC may choose any technically feasible point for interconnection and may not be charged for delivery of ILEC traffic to that POI), *MCI Metro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc.*, No. 03-1238 Slip Op. at 14 (4th Cir. 2003) (reversing lower court grant of summary judgment for ILEC, finding that district court erred in concluding that the ILEC could charge the CLEC for the cost of transporting local calls originating on the ILEC network, as FCC rules unequivocally prohibit such charges and allowed no exceptions), *MCI Telecomms. Corp. v. Bell Atl. – Pa.*, 271 F.3d 491, 517 (3rd Cir. 2001) (holding that a state commission may not require CLEC to interconnect at other than the CLEC selected, technically feasible point, stating that to require otherwise “would be inconsistent with the policy behind the Act”), *US West Comms. v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999) (affirming lower court decision permitting single point of interconnection).

compensate Level 3 for terminating traffic originated by BellSouth's customers. Although these aspects of interconnection and intercarrier compensation are well-settled law, BellSouth nevertheless seeks to avoid the law and impose unlawful and unwarranted costs on its competitor, Level 3. Level 3 therefore seeks Authority arbitration to affirm its rights under federal law.

ISSUE ONE: Originating Transport Responsibility

Statement of the Issue: Is each Party required to bear financial responsibility for delivering its originating traffic to the interconnection point selected by Level 3?

Applicable Contract Provisions: Attachment 3, Sections 3.3.3, 4.3, 4.7

Level 3's Position

Yes. Each Party is financially responsible for delivering its originating traffic to the interconnection point selected by Level 3.

BellSouth's Position

No. If the Parties establish a single interconnection point in a LATA, Level 3 must bear the cost of delivering traffic originated by BellSouth's own customers and carried over BellSouth's network to the single interconnection point. Moreover, Level 3 must pay ordering charges from BellSouth's access charge tariff, not Section 252(d) cost-based, rates for ordering charges related to the BellSouth facilities used to carry BellSouth's originating traffic to the interconnection point.

Basis for Level 3's Position

Level 3's proposal to resolve Issue 1 is consistent with federal statutes, FCC regulations and federal circuit court case law interpreting such laws and regulations. The FCC "rules of the road" for interconnection permit Level 3 to select a single interconnection point per LATA and require BellSouth to deliver traffic originating on its network to that interconnection point at no

charge to Level 3⁵ BellSouth has nominally agreed to a single interconnection point per LATA. However, BellSouth attempts to penalize Level 3 for exercising its right to establish a single interconnection point per LATA by shifting BellSouth's federally-recognized responsibility for its own originating transport costs to Level 3. Because BellSouth's transport penalty is prohibited by law, the Authority should adopt Level 3's position.

FCC Rule 51.703(b) incorporates the second "rule of the road"—the principle that the originating carrier is financially responsible for delivering its traffic to the interconnection point.

A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.⁶

As is well settled law, a LEC's costs of delivering its originating traffic to the network of a co-carrier are recovered in the LEC's end users' rates.⁷ Thus, BellSouth is responsible for routing the call from its own customers to the interconnection point and must absorb all costs associated with the origination of traffic on BellSouth's side of the network. Requiring the originating LEC to bear the costs of delivering its originating traffic to the interconnection point selected by the CLEC, and to compensate the terminating LEC for the transport and termination functions it performs, is consistent with the current calling-party's-network-pays ("CPNP") regime.⁸ In short, BellSouth must "look to" its local end user customers to recover the costs of calls they make.⁹ Similarly, Level 3 must bear the cost of delivering to the interconnection point any traffic originated by its local customers.

⁵ *Id.*

⁶ 47 C.F.R. § 51.703(b).

⁷ *TSR Wireless*, at ¶ 34.

⁸ *Intercarrier Compensation NPRM*, at ¶ 9.

⁹ *Qwest Corp. et al. v. FCC et al.*, 252 F.3d 462, 468 (D.C. Cir. 2001).

Not only does BellSouth seek to shift its responsibility for originating transport costs to Level 3, it also seeks to impose above-cost, access tariff-based ordering charges on Level 3 for the facilities BellSouth deploys in its network. Because Section 252(d)(1) requires cost-based rates for interconnection, BellSouth may not impose these tariffed charges on Level 3.¹⁰ The Authority should therefore adopt Level 3's language and require BellSouth to include in the Agreement ordering charges that reflect TELRIC to comply with the Act's pricing requirements.

While it is not appropriate for BellSouth to charge Level 3 ordering charges for facilities used to carry BellSouth's originating traffic, Level 3 recognizes its reciprocal compensation obligation to compensate BellSouth for that portion of facilities on BellSouth's side of the interconnection point used to carry Level 3's originating traffic. Therefore, Level 3 is willing to pay a portion of the ordering charges for two-way facilities used to carry both parties' traffic. However, those charges must comply with the Act's pricing requirements in Section 252(d). Because Level 3's position complies with federal law and BellSouth's does not, the Authority should adopt Level 3's contract language.

ISSUE TWO Enhanced Applications Traffic - VoIP Traffic

Statement of the Issue: May BellSouth unilaterally define switched access traffic to include all Enhanced Applications Traffic ("EAT"), including VoIP Traffic, of the customers of Level 3 regardless of how such traffic is classified under federal law?

Applicable Contract Sections Attachment 3, Section 7.4.1

Level 3's Position

No. BellSouth's position ignores the distinction between the treatment of information services traffic ("Enhanced Applications Traffic" or "EAT") and telecommunication services traffic under federal law. Under current federal law, Enhanced Applications Traffic, such as

¹⁰ The relevant standard for cost-based rates under the Act is Total Element Long Run Incremental Costs (TELRIC). The access charge-based rates advocated by BellSouth have not been established based on TELRIC.

VoIP, does not have imposed upon it access charges and thus enhanced service providers (“ESPs”) do not pay access charges. ESPs are entitled to purchase from carriers such as Level 3 local access to the public switched telecommunications network “PSTN” to originate and terminate EAT. Therefore, for purposes of intercarrier compensation, the traffic of those ESP customers of Level 3 are treated like any other business customer of local services. If Enhanced Applications Traffic, such as VoIP, is originated by or terminated to an ESP provider, both Level 3 and BellSouth are entitled to cost-based reciprocal compensation for terminating such VoIP Traffic, not access charges.

BellSouth’s Position

Yes. Regardless of whether the classification of Enhanced Applications Traffic, such as VoIP Traffic, is an information or telecommunications service, if it originates in one LATA and terminates in another LATA, it should be subject to above-cost access charges, not cost-based interconnection charges.

Basis for Level 3’s Position

For more than twenty years, the FCC has made a regulatory distinction between basic (or telecommunications) and enhanced (or information) services. Congress codified this distinction in the 1996 Act and determined that encouraging the development of Internet services unfettered from regulation is national policy. The FCC’s ESP exemption furthers that national policy and is responsible for enabling the Internet to grow from a limited, scientific and governmental communications network to the ubiquitous, open, interoperable network that all Americans enjoy today.

In 1998, in its *Report to Congress*,¹¹ the FCC reviewed a new application that is commonly referred to as Internet telephony, Internet Protocol ("IP") telephony, or voice over IP ("VoIP"). In the *Report to Congress*, the FCC declined to find that any form of VoIP was a telecommunications service subject to common carrier regulation. Although the FCC tentatively established a four-prong definition of a phone-to-phone VoIP application that bears characteristics of a telecommunications service, it refused to classify even this hypothetical application as such. Since the *Report to Congress*, the FCC has consistently and steadfastly refused to impose legacy, above-cost access charges on VoIP applications.¹² This Enhanced Applications traffic such as VoIP is subject to cost-based, 251(b)(5) reciprocal compensation.

BellSouth ignores federal law and seeks to impose access charges upon carriers such as Level 3 who provide interconnection services for ESP applications such as VoIP. BellSouth defines switched access traffic to include all forms of VoIP applications. Because ILECs such as BellSouth are ignoring federal law and attempting to impose access charges in violation of the FCC's ESP exemption, Level 3 has filed a forbearance petition with the FCC requesting that it remove any possible doubt concerning application of its ESP exemption to ESP Enhanced Applications traffic such as VoIP Traffic. The FCC must act on Level 3's forbearance petition no later than March 23, 2005. Once the FCC acts on Level 3's petition, the Parties will incorporate the results of that decision into the interconnection agreement through the change in law process. Pending the FCC decision, however, the Authority should adopt the position advocated by Level 3's as it is consistent with current federal policy.

¹¹ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Report to Congress*")

¹² *Report to Congress*, at ¶¶ 88-89

Beyond the regulatory framework that supports adopting Level 3's contract language, sound public policy – the encouragement of economic growth, support for the expansion of broadband facilities and deployment of new, innovative advanced services throughout the state, and the benefits of true competition — demand that BellSouth's proposed language be rejected. Adopting the position advocated by BellSouth would encumber the new and innovative capabilities inherent in VOIP with the burden of archaic pricing policies thwarting the development of this new technology which promises to revolutionize how people communicate and interact and which has the potential of expanding job opportunities for people in rural areas throughout Tennessee. The demands of the rapidly evolving technology and network underlying the Internet requires that the language proposed by Level 3 be adopted to provide operating and market certainty and promote competition in the provision of local services to ESP VoIP application providers.

ISSUE THREE **Compensation For Locally-dialed ISP-Bound Traffic**

Statement of the Issue: Does the FCC's *ISP Remand Order* establish compensation for all locally dialed ISP-Bound Traffic?

Applicable Contract Sections Attachment 3, Sections 7.1.2

Level 3's Position

Yes. The FCC's *ISP Remand Order* governs the intercarrier compensation regime for all locally dialed ISP-Bound Traffic.

BellSouth's Position

No. Pursuant to the *ISP Remand Order*, intercarrier compensation is due for ISP-Bound Traffic only if that traffic involves a call originated by a calling party in one LATA to an ISP server or modem in the same LATA.

Basis for Level 3's Position

In its April 2001 *ISP Remand Order* the FCC asserted exclusive jurisdiction over compensation issues related to ISP-bound traffic¹³ In the *ISP Remand Order*, the FCC ruled that traffic to ISPs was excluded from the reciprocal compensation requirements of Section 251(b)(5) by operation of Section 251(g) of the Act¹⁴ Further, under its authority to preempt the authority of states over intrastate communications recognized in *Louisiana PSC v FCC*,¹⁵ the FCC held that state commissions no longer had jurisdiction to address the issue of intercarrier compensation for ISP-Bound Traffic¹⁶ Thus, going forward, the FCC has sole authority to address all questions relating to intercarrier compensation for the exchange of ISP-Bound Traffic Level 3's position is that it is entitled to intercarrier compensation under the FCC's regime for all locally-dialed ISP-bound traffic

For the purposes of this Agreement, the Parties have agreed that all calls within a LATA will be treated as "local" and access charges will not apply On the one hand, BellSouth acknowledges that if the modem bank is within a particular LATA and the call terminates in that LATA, the call is interstate and the FCC has preempted the Authority's jurisdiction to set compensation Yet BellSouth also contends that if the modem bank is physically located outside of the LATA to which the ISP's telephone number is assigned, the call is intrastate and the Authority has jurisdiction to impose bill and keep BellSouth is wrong on both assertions The

¹³ Although the U S Court of Appeals for the D C Circuit remanded the *ISP Remand Order* to the FCC for further consideration, the Court did not vacate the Order, leaving the federal compensation regime in place while the FCC deliberates the issue once again *WorldCom, Inc v FCC*, 288 F 3d 429 (D C Cir 2002) Accordingly, even though the legal rationale supporting the basis for the FCC to promulgate its federal compensation regime has been rejected, the federal compensation regime itself remains intact and applies in this case

¹⁴ *ISP Remand Order*, at ¶ 46 This aspect of the *ISP Remand Order* was rejected by the D C Circuit *WorldCom, Inc v FCC*, 288 F 3d 429 (D C Cir 2002)

¹⁵ *Louisiana PSC v FCC*, 476 U S 355, 106 S Ct 1890 (1986)

¹⁶ *ISP Remand Order*, at ¶ 82

FCC did *not* distinguish “local” ISP-Bound Traffic from “non-local” ISP-Bound Traffic. In fact, the FCC repudiated its earlier distinction between “local” and “non-local” for all traffic.

This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection [251](b)(5) as all “local” traffic. We also refrain from generally describing traffic as “local” traffic because the term “local,” not being a statutorily defined category, is particularly susceptible to varying meanings, and significantly, is not a term used in section 251(b)(5) or section 251(g).¹⁷

Instead, the *ISP Remand Order* makes clear that the new federal regime applies to *all* ISP-Bound Traffic. “We conclude that this definition of ‘information access’ was meant to include *all access traffic* that was routed by a LEC ‘to or from’ providers of information services, of which ISPs are a subset.”¹⁸ Nowhere does the *Order* limit its regime to “local” ISP-Bound Traffic.

The FCC was fully aware that CLECs were using foreign exchange-like (“FX-like”) arrangements to serve ISPs long before the *ISP Remand Order* was released. Several carriers—both ILECs and CLECs, including Level 3—asked the FCC to include FX-like traffic within the scope of the order.¹⁹ Several state commissions have recognized that the *ISP Remand Order* addressed all ISP-Bound Traffic, including traffic to ISPs that do not have a modem bank in the LATA and use FX-like arrangements.²⁰ An Arbitration Panel of the Texas Public Utility

¹⁷ *ISP Remand Order*, at ¶ 34.

¹⁸ *ISP Remand Order*, at ¶ 44 (emphasis added).

¹⁹ See ex parte filings in FCC CC Docket No. 99-68: Letter dated March 28, 2001 from Gary L. Phillips, SBC Telecommunications, Inc., to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 3; Letter dated March 7, 2001 from Susanne Guyer, Verizon, to Dorothy Attwood, at 2-3; Letter dated December 13, 2000 from John T. Nakahata, Counsel to Level 3 Communications, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 1.

²⁰ See *Essex Telecom, Inc. v. Gallatin River Communications, L.L.C.*, Docket No. 01-0427, Order, at 8 (Ill. C.C. July 24, 2002) (“with the adoption of the *ISP Remand Order*, the Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls”), accord, *Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A 01-11-045, A 01-12-026, Opinion Adopting Final Arbitrator’s Report With Modification (Cal. PUC July 5, 2002), *Investigation as to Whether Certain Calls are Local*, DT 00-223, *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling* (Cont’d).

Commission has also considered the issue, and specifically addressed a position similar to the one taken by BellSouth in this proceeding. The Texas Arbitrators rejected the argument that “the ISP Remand Order does not apply to all types of ISP-bound traffic, but only to ISP traffic that originates and terminates in the same local calling area.”²¹ Because the FCC had said ISP-Bound Traffic was subject to Section 251(g) rather than Section 251(b)(5), all compensation for it was governed by the FCC’s rules adopted under its Section 201 authority.²² The Florida Commission also issued a decision regarding this issue stating that “due to the FCC’s recent *ISP Remand Order*, which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers.”²³

Because the FCC has exclusive jurisdiction over locally-dialed calls to ISPs, regardless of whether the ISP has equipment in the LATA and is served through an FX-like arrangement, the

Areas, DT 00-054, Final Order, Order No. 24,080 (NH PUC Oct. 28, 2002), *Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 U.S.C. Section 252 of Interconnection Rates, Terms, and Conditions*, Docket No. 05-MA-130, Order Approving an Interconnection Agreement, at 8-9 (Wisc. PSC Feb. 13, 2003), *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc.*, Docket No. UT-023043, Seventh Supplemental Order Affirming Arbitrator’s Report and Decision, at 2-4 (Wash. UTC Feb. 27, 2003), *Investigation into the Use of Virtual NPA/NXX Calling Patterns*, UM 1058, Order (Ore. PUC May 27, 2003), *rehearing denied*, Order (Ore. PUC Sep. 16, 2003), *Allegiance Telecom of Ohio, Inc.’s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award, at 9 (PUC Ohio Oct. 4, 2001) (“The Commission agrees that all calls to FX/virtual NXX [numbers] that are also ISP-bound are subject to the intercarrier compensation regime set forth in the ISP Remand Order”), *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (PUC Ohio May 9, 2002), *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Dkt. No. 01-01-29, at 41-2 (Conn. DPUC Jan. 30, 2002) (“intercarrier compensation for ISP-bound traffic is within the jurisdiction of the FCC and that on a going forward basis, the Department has been preempted from addressing the issue beyond the effective date of the ISP Order [June 14, 2001]”), *TDS Metrocom, Inc.*, Case No. U-12952, Opinion and Order (Mich. PSC Sept. 7, 2001) (with respect to FX-like traffic, the ISP Remand Order “takes care of ISP traffic”).

²¹ *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for “FX-Type” Traffic Against Southwestern Bell Telephone Company*, PUC Docket No. 241015, Revised Arbitration Award, 31 (Tex. PUC Aug. 28, 2002).

²² *Id.*

²³ *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996*, Docket No. 000075-TP, Order on Reciprocal Compensation, Phases II and IIA, Order No. PSC-02-1248-FOF-TP, 26 (Fla. PSC Sept. 10, 2002).

Authority should adopt Level 3's position and apply the FCC's interim compensation regime to all locally-dialed ISP-Bound Traffic

ISSUE FOUR

Compensation For ISP-Bound Traffic From January 1, 2004 Until The Effective Date Of A Subsequent Agreement

Statement of the Issue: Does the Amendment to the Parties' existing interconnection agreement executed on December 24, 2003, provide that the intercarrier compensation rate for ISP-Bound Traffic is \$0 001 per minute of use ("MOU") from January 1, 2004 until the effective date of a subsequent agreement?

Applicable Contract Sections Existing Agreement, Attachment 3, Sections 5 1 2, 5 1 3, Amendment, dated Dec 24, 2003, Sections 2 2, 3, New Attachment 3, Sections 7 1 4

Level 3's Position

Yes Pursuant to the Amendment to the Parties' existing interconnection agreement, executed on December 24, 2003 ("Amendment") the intercarrier compensation rate for ISP-Bound Traffic is \$0 001 per MOU commencing on January 1, 2004 until the effective date of a subsequent agreement entered into by the Parties ²⁴

BellSouth's Position

No BellSouth believes that the rate should be \$0 0007

Basis for Level 3's Position

Section 2 2 of the Amendment provides that "[i]f as of the expiration of this Agreement a Subsequent Agreement has not been executed by the Parties, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated or arbitrated" In addition Section 3 of the Amendment provides that except for provisions that were expressly modified in the Amendment, such as the collocation provisions, "[a]ll other provisions of the Agreement, dated January 1, 2001, shall remain in full force and effect" In short, the Parties agreed in the Amendment that the terms of the Parties' existing agreement that were not

²⁴ The Amendment and relevant provisions of the Existing Agreement are attached hereto as Exhibit C

modified by the Amendment, including the terms regarding intercarrier compensation, would remain in effect until the effective date of a subsequent agreement

Under Section 5.1.3 of the existing interconnection agreement, the Parties agreed to compensate each other for termination of ISP-Bound Traffic “at the same per minute of use rates set forth in Section 5.1.2” for Local Traffic. Pursuant to Section 5.1.2, the rate that was in effect on December 24, 2003 (the date of the Amendment) was \$0.001 per MOU. Thus, the intercarrier compensation rate for ISP-Bound Traffic and Local Traffic from January 1, 2004 until the effective date of a subsequent agreement (the “Evergreen Period”) is \$0.001 per MOU as established in Sections 5.1.2 and 5.1.3 of the Agreement. BellSouth now seeks to renege on the Parties’ bargain as memorialized in the Amendment and use a rate of \$0.0007 for the exchange of ISP-Bound Traffic during this Evergreen Period. The Authority should not permit BellSouth to evade the terms of the Amendment and should adopt Level 3’s proposed contract language.

ISSUE FIVE **Amount of Minutes Of ISP-Bound Traffic Subject to Intercarrier Compensation For 2004 and Subsequent Years**

Statement of the Issue: Does the FCC’s *ISP Remand Order* impose a growth cap on the total MOU of ISP-Bound Traffic for which intercarrier compensation is due for the year 2004 and subsequent years?

Applicable Contract Sections Attachment 3, Sections 7.1.4, 7.1.5

Level 3’s Position

No. Although, the FCC’s *ISP Remand Order* establishes a growth cap on the total MOU of ISP-Bound Traffic for which intercarrier compensation is due for 2001, 2002, and 2003, the *ISP Remand Order* on its face does not set a growth cap for 2004. Accordingly, there is no cap on the ISP-Bound Traffic MOU that are subject to intercarrier compensation under the FCC’s regime in 2004 and subsequent years. Intercarrier compensation is due for all ISP-Bound Traffic MOU terminated by a Party in year 2004 and subsequent years.

BellSouth's Position

Yes The amount of traffic, in BellSouth's view, for which compensation is due is equal to a ceiling equal to a ten percent growth factor added to, on an annualized basis, the number of ISP-Bound Traffic MOU for which the terminating Party was entitled to compensation during the first quarter of 2001, plus an additional ten percent

Basis for Level 3's Position

In the *ISP Remand Order*, the FCC asserted exclusive jurisdiction over compensation issues related to ISP-Bound Traffic on a going forward basis In that Order, the FCC ruled that traffic to ISPs was excluded from the reciprocal compensation requirements of Section 251(b)(5) by operation of Section 251(g) of the Act²⁵ As discussed more fully above, the FCC then adopted an intercarrier compensation regime for ISP-Bound Traffic that relies in part on state-set rates for ISP-Bound Traffic and established a rebuttable presumption that traffic above a ratio of 3:1 terminating to originating traffic is ISP-Bound Traffic Under the FCC's interim intercarrier compensation regime, traffic above the 3:1 ratio will be capped at \$0.0015/MOU for 6 months from the effective date of the Order, at \$0.0010 /MOU for the next 18 months, and at \$0.0007/MOU for 36 months from the effective date of the Order "or until further Commission action (whichever is later)"²⁶

The FCC's interim intercarrier compensation regime also established a growth cap applicable to ISP-Bound Traffic for the years 2001, 2002, and 2003, but not for 2004 and beyond Specifically, the FCC stated

²⁵ *ISP Remand Order*, at ¶ 46 This holding of the *ISP Remand Order* was rejected by the D.C. Circuit Court of Appeals

²⁶ *ISP Remand Order*, at ¶ 78

In addition to the rate caps, we will impose a cap on total ISP-bound minutes for which a LEC may receive this compensation. For the year 2001, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which that LEC was entitled to compensation under that agreement during the first quarter of 2001, plus a ten percent growth factor. For 2002, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that agreement in 2001, plus another ten percent growth factor. In 2003, a LEC may receive compensation, pursuant to a particular interconnection agreement, for ISP-bound minutes up to a ceiling equal to the 2002 ceiling applicable to that agreement.²⁷

Significantly, the FCC did not establish a growth cap on ISP-Bound Traffic for 2004 and subsequent years in this passage or anywhere else in the *ISP Remand Order* or any other FCC Order. Thus, on its face, the *ISP Remand Order* does not establish a growth cap on compensation for ISP-Bound Traffic and compensation is due for all such MOU starting in 2004.

The FCC's intention in the *ISP Remand Order* not to impose a growth cap on ISP-Bound Traffic for 2004 and beyond is particularly self-evident when the language establishing the growth caps for earlier years is contrasted with the language in the same paragraph establishing the rate caps for all years. As noted above, the FCC unequivocally stated in the *ISP Remand Order* that the \$0.0007 rate cap for ISP-Bound Traffic starts "in the twenty-fifth month, and continue[s] through the thirty-sixth month or until further [FCC] action (whichever is later)."²⁸ Obviously, the FCC knows how to impose a cap for subsequent years when it desires to do so (as it clearly did for the rate cap in the same paragraph). The FCC did not, however, state that the growth cap would remain in place until further FCC action. Thus, under the plain meaning of

²⁷ *Id.*

²⁸ *ISP Remand Order*, at ¶ 78.

the *ISP Remand Order*, the FCC did not impose a growth cap on ISP-Bound Traffic for the year 2004 and beyond

BellSouth's proposed language is inconsistent with the plain meaning of the *ISP Remand Order* because it purports to impose a growth cap for the year 2004 until the expiration of the agreement. Level 3's proposed language is consistent with the *ISP Remand Order* because it does not impose any such growth cap. The Authority should therefore reject BellSouth's position and adopt Level 3's position.

ISSUE SIX **Recurring Charges For SS7 Signal Messaging**

Statement of the Issue: Where a Party provides elements of its own SS7 network (or leases elements from a third party provider), should the other Party be precluded from imposing recurring charges for SS7 signal messages for intraLATA traffic exchanged under the agreement?

Applicable Contract Sections Attachment 3, Section 5.2

Level 3's Position

Yes. SS7 Integrated Services Digital Network User Part ("ISUP") messages are an integral part of call set-up and switching functionality. BellSouth's separate SS7 message charge should be rejected as anti-competitive because it shifts some of BellSouth's costs to its competitors, imposes unnecessary costs on its competitors, and violates rules mandating that the originating Party bears financial responsibility for delivering its traffic to the interconnection point.

BellSouth's Position

No. BellSouth has not responded to Level 3's proposed language. Accordingly, BellSouth's position is unknown.

Basis for Level 3's Position

SS7 ISUP messages are an integral part of call set-up and switching functionality. The Service Switching Point (“SSP”) is typically the part of the LEC’s local switch that generates the signaling messages that are used to set-up or tear down a call and are transported through the remaining components of the SS7 network.²⁹ Each SSP has a unique address in the SS7 network that is identified through a point code assignment. The SS7 network, in turn, ensures that the SS7 messages are properly routed to the SSP that is associated with a given point code. SSPs are connected to Signal Transfer Points (“STPs”) through redundant facilities. STPs act like traffic cops, routing the SS7 messages to the SSP operated by the carrier that provides service to the called party.³⁰

Under standard industry practice, SS7 ISUP message costs have been recovered through the intercarrier compensation rate applicable to traffic of a particular jurisdiction. For example, reciprocal compensation rates typically include a switching component that is intended to recover SS7 ISUP messaging cost and other costs for Section 251(b)(5) traffic.³¹ Likewise, intrastate access charges typically have compensated LECs for the SS7 message costs and other costs associated with intraLATA toll traffic.³² Level 3’s proposed language provides for intercarrier compensation for all forms of traffic exchanged between the Parties such that separate compensation for SS7 messages is unnecessary. BellSouth has not justified a departure from this standard industry practice.

²⁹ *Cox Nebraska Telecom, LLC and Illuminet, v. Qwest Communications, Inc.*, Formal Complaint No. FC-1296, ¶¶ 24-27 (Neb. PSC Dec. 17, 2002) (“*Cox Decision*”) (“there would be no voice traffic if the SS7 messages at issue were not exchanged between the SSPs”).

³⁰ *Cox Decision*, at ¶¶ 26-29.

³¹ *Cox Decision*, at ¶ 63 (“SS7 message charges are included within the reciprocal compensation rates or bill-and-keep arrangements included in the [interconnection agreements]”).

³² IntraLATA toll access charges not only operate to recover the LEC’s incremental costs relating to such traffic, but also typically contain an implicit subsidy to fund universal service programs.

In addition, as determined by the Florida Commission staff, establishing a separate intercarrier compensation system for SS7 messages “would unnecessarily and unreasonably increase costs for competitive carriers that provision their own SS7 networks by requiring that they invest in a system simply to reciprocal[ly] bill BellSouth”³³ BellSouth’s unilateral imposition of these costs upon competitors would have the effect of undermining competition and would ultimately increase the prices for consumer services as the carriers would have to recover such charges along with the administrative costs of engaging in compensation for such messages

Further, under the recovery schemes that BellSouth has attempted to impose in the past in many states, BellSouth has billed “for ISUP and TCAP messages regardless of the originating party or the direction of the message”³⁴ Thus, BellSouth seeks to impose SS7 message costs upon competitors where BellSouth’s own customer originated the underlying call and is the cost causer of the SS7 messages Such costs are BellSouth’s responsibility BellSouth should not be permitted to shift its costs to other carriers³⁵ In this case, BellSouth’s scheme violates existing law which requires that the originating party bears financial responsibility for delivering its traffic to the interconnection point³⁶ Accordingly, the Authority should adopt Level 3’s position to preclude such anti-competitive conduct by BellSouth

³³ *Joint Petition of US LEC of Florida, Inc., Time Warner Telecom of Florida, L P, and ITC DeltaCom Communications Objecting to and Requesting Suspension of Proposed CCS7 Access Arrangement Tariff Filed By BellSouth Telecommunications, Inc., Docket No 020129-TP, Vote Sheet and Staff Recommendations, at Issue 8 (Feb 18, 2003)*

³⁴ *Id.* at Issue 7

³⁵ *See, Cox Decision*, at ¶ 46 (“the effect of Qwest’s intrastate SS7 message rate structure is to deter competition by an improper increase of the costs to a competitor or at least a shift of Qwest’s costs to other carrier, thus providing Qwest an improper competitive advantage we will not allow that result to occur”)

³⁶ 47 C.F.R. § 51.703 (“A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC’s network”), *Inter-carrier Compensation NPRM*, at ¶ 9

B. TIER II COMPLIANCE ISSUES IMPACTING THE COMMERCIAL UTILITY OF THE AGREEMENT.

Resolution of these Tier II issues is important to make the agreement comply with current law and to ensure that it is commercially reasonable and useful to the Parties. If the Authority does not resolve these issues, the result will be an unacceptable degree of uncertainty and commercial impracticality that will be discriminatory against Level 3, thereby increasing risk and deterring competition.

ISSUE SEVEN: **Should BellSouth establish standard processes and rates for any routine network modifications that it has performed?**

Applicable Contract Provisions: Attachment 2, Section 1.8.2, 2.8.6.2, 5.2.4, 6.2.5, 6.4.2

Level 3's Position

Yes. Once BellSouth has performed a routine network modification for a requesting carrier for the first time, be it Level 3 or any other party to a BellSouth interconnection agreement, then BellSouth should document the process used to implement those modifications and the cost of the modification so that they may be referenced and invoked by subsequent requesting carriers.

BellSouth's Position

No. BellSouth believes that each routine network modification that it has not "anticipated" should be provided on an individual case basis or pursuant to BellSouth's Special Construction Process, regardless of whether this modification has been performed previously.

Basis for Level 3's Position

Level 3's proposal to resolve this issue is consistent with federal law and the FCC's rules. Section 251(c)(3) of the Act provides that incumbent LECs

have a duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms,

and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252³⁷

More specifically, FCC Rule 51.319(a)(8) provides, in part, that “[a]n incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion ”

Level 3 maintains that the best way to ensure nondiscrimination among BellSouth and requesting parties, with the least enforcement burden for all concerned, is for BellSouth to establish and publish standard procedures and rates for each routine network modification as it is developed and implemented. The benefits of this requirement are demonstrated by analogy to the Section 252(h) and (i) requirements that interconnection agreements be filed and their terms be made available to other requesting carriers -- requirements that the FCC views “as the primary tool of the 1996 Act for preventing discrimination under section 251 ”³⁸

Level 3 is not requesting that BellSouth disclose information that may be confidential to specific requesting parties. Rather, Level 3 requests that BellSouth make available to Level 3 the same process and rates BellSouth used for any prior requesting carrier or itself. In order to ensure that BellSouth does not discriminate among carriers in providing routine network modifications, it should make available details concerning the process governing each type of modification and the cost of each modification which should conform to the cost standards of Section 252(d) of the Act. BellSouth’s refusal to do so not only invites discriminatory conduct,

³⁷ 47 U.S.C. § 252(c)(3)

³⁸ *Local Competition Order*, at ¶ 1296

it also introduces needless delays (through the individual case basis process or Special Construction Process) ³⁹

The FCC has already determined as a matter of law that, at a minimum, the following network modifications are routinely performed by the ILECs and must be performed by BellSouth on behalf of requesting CLECs

rearranging or splicing of cable, adding an equipment case, adding a doubler or repeater, adding a smart jack, installing a repeater shelf, adding a line card, deploying a new multiplexer or reconfiguring an existing multiplexer, and attaching electronic and other equipment that the [ILEC] ordinarily attaches to a DS1 loop to activate such loop for its own customer ⁴⁰

Thus, the FCC has already determined that BellSouth has an obligation to provide the routine network elements expressly listed in Rule 51.319(a) and additional modifications as determined by the FCC or state commission to requesting CLECs. Level 3 merely requests that it have the ability to receive a routine network modification that, by definition, is “routine,” in a timely manner, pursuant to a standard non-discriminatory process and established prices that conform to the cost standards of Section 252(d) of the Act. To the extent they are not already in place, BellSouth should be required to develop such standard processes and Section 252(d) compliant charges for each such routine modification once BellSouth has provisioned such modification for any CLEC for the first time. Level 3’s position is consistent with the Act and FCC rules and is commercially reasonable. The Authority should therefore adopt Level 3’s proposed contract language.

³⁹ Indeed, BellSouth’s proposed treatment of these network modifications is precisely what any monopolist would want. Under classic economic theory, monopolists seek to price their services to each customer based on the relative monopoly power they possess vis a vis that customer. Thus, if a customer has little bargaining power, the monopolist can exact monopoly profits. BellSouth, through the guise of the ICB process, is seeking to price each network modification individually. The TRA should not permit such blatant anticompetitive pricing.

⁴⁰ 47 C.F.R. § 51.319(a)(8). The FCC has also determined that “activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility” are “routine” network modifications that must be provisioned by BellSouth on behalf of Level 3. 47 C.F.R. § 51.319(e)(5).

ISSUE EIGHT Dispute Resolution For Non-Billing Disputes

Statement of the Issue: Should the Parties escalate non-billing disputes to their higher level representatives for a minimum of thirty (30) days of negotiation in order to resolve a non-billing dispute prior to petitioning a court or agency of competent jurisdiction for resolution?

Applicable Contract Sections General Terms, Sections 10 1, 10 3

Level 3's Position

Yes The Parties have settled disputes in the past without Authority intervention through negotiation by each Party's senior managers under dispute resolution procedures nearly identical to those proposed by Level 3 ⁴¹ Thus, adoption of Level 3's proposed process is likely to save the Authority staff and the Parties significant resources in resolving issues without litigation Moreover, Level 3 should not be forced to forego its rights to seek relief in any forum as a condition of obtaining an interconnection agreement with BellSouth

BellSouth's Position

No BellSouth has not explained why it will not agree to use dispute resolution procedures that have worked and it has agreed to use in the past or why it limits the forum for dispute resolution to the Authority

Basis for Level 3's Position

Level 3 proposes that the Parties attempt to resolve non-billing disputes in the first instance by requiring that each Party appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons administering the Agreement These representatives are then required to negotiate for a minimum of thirty (30) days after appointment in an attempt to resolve the dispute without Authority involvement BellSouth agreed to nearly identical terms in Sections 12 3 1 and 12 3 2 of the Parties' existing

⁴¹ A cursory review of other interconnection agreements that BellSouth has entered would confirm that procedures like those advocated by Level 3 are a standard industry practice

agreement and has insisted on using such a process in the past. In fact, the Parties have frequently and successfully used such higher level negotiations to settle significant interconnection and intercarrier compensation disputes without Authority involvement. BellSouth has not explained why it now seeks to discard this proven and successful dispute resolution process in favor of taking non-billing disputes directly to the Authority.

Level 3's proposal is not only consistent with the longstanding and proven dispute resolution practices of the Parties, but also is likely to save the Authority and its staff considerable resources in addressing such disputes by obviating the need for Authority involvement. At a minimum, Level 3's proposed process will ensure that the disputed issues are well formulated before one of the Parties petitions the Authority to resolve the issue. In short, Level 3's proposed process should be adopted in an effort to conserve the resources of the Parties by settling issues without litigation where feasible.

BellSouth's proposed section 10.1 also requires the Parties to agree to bring all non-billing disputes solely to the Authority for resolution as a condition of obtaining an interconnection agreement. Level 3's proposed language preserves each Party's rights to seek relief from any court or other agency of competent jurisdiction.

Level 3's language is more reasonable because some non-billing disputes may be outside the expertise or even the jurisdiction of the Authority and a broader array of remedies may be available in other forums. For example, the FCC has exclusive jurisdiction over issues regarding interstate services and extensive expertise regarding interstate issues.⁴² Further, in some instances it may be more efficient for a Party to seek relief from the FCC rather than petition the

⁴² As discussed in more detail above, the FCC also has exclusive jurisdiction over the issue of intercarrier compensation for ISP traffic. Requiring such issues to be addressed only at the TRA would likely unnecessarily involve the TRA in such disputes.

nine (9) separate state commissions that govern BellSouth's operating region. By bringing a dispute before the FCC under Section 208 of the Act or some other authority, a Party can in some instances avoid the expense of litigating in nine (9) jurisdictions and minimize the potential for inconsistent decisions among the state commissions. Further, BellSouth agreed to a similar provision in Section 12.3.2 of the Parties' existing agreement and has not justified a deviation from the Parties' long-standing practice. Finally, it is unreasonable for BellSouth to force Level 3 to forego its rights to obtain relief in forums other than the Authority as a condition of obtaining an interconnection agreement.⁴³ Thus, the Authority should reject BellSouth's position and direct the Parties to incorporate Level 3's proposed language in their Agreement.

ISSUE NINE **Liability of Level 3 Entities**

Statement of the Issue: Should affiliates of Level 3 that are not a Party to the Agreement, are not CLECs, and do not obtain services under the Agreement be "jointly and severally liable" for obligations of Level 3 under the Agreement?

Applicable Contract Sections General Terms, Section 7.1

Level 3's Position

No. Only Level 3 affiliates that have rights and obligations under the Agreement and are certificated CLECs should be liable for obligations under the Agreement.

BellSouth's Position

Yes. If "Level 3 consists of two (2) or more separate entities," then "all such entities shall be jointly and severally liable for the obligations of Level 3 under this Agreement."

Basis for Level 3's Position

Only those Level 3 entities that have rights and obligations under the Agreement and are certificated CLECs should be jointly and severally liable for obligations arising under the

⁴³ This is but one more instance of BellSouth attempting to use its monopoly power to leverage conditions of its choosing. The TRA should resist such efforts.

Agreement Level 3 Communications, LLC is the only Level 3 entity that is certificated as a CLEC under state law in the BellSouth operating region and is eligible to obtain services pursuant to Section 251(c) of the Act Level 3 Communications, LLC operating as a CLEC is the only Level 3 entity that will obtain services under the Agreement including, but not limited to, interconnection, collocation, access to UNEs, and transport and termination of traffic originated on its network In turn, Level 3 Communications, LLC operating as a CLEC will provide services to BellSouth under the Agreement including, for example, transport and termination of traffic originated by BellSouth customers Level 3's proposed language is reasonable because only Level 3 Communications, LLC, is a Party to the Agreement Level 3's proposed contract language ensures that this entity will be bound by its terms and liable for obligations arising under the Agreement

BellSouth, however, has taken the unreasonable position that under its proposed language, all Level 3 affiliates —entities that do not obtain or provide services under the Parties' Agreement and are not CLECs or telecommunications carriers — should be liable under the Agreement BellSouth's position is unreasonable as demonstrated by the fact that under Sections 251(c) and 252 of the Act only LECs may obtain collocation, direct interconnection, access to UNEs, resale at a wholesale discount rate and other services under a Section 251(c) interconnection agreement In fact, in the past, BellSouth has refused to even negotiate, let alone execute 251(c) interconnection agreements in a jurisdiction with entities that are not certificated LECs pursuant to that state's jurisdiction If BellSouth may refuse to grant such entities rights under the Agreement, it may not now demand obligations from similar entities in the form of joint and several liability under the Agreement For example, Level 3 owns a software services

company, Software Spectrum, Inc.,⁴⁴ that does not obtain or provide services under the Agreement and is neither a LEC nor a telecommunications carrier. BellSouth's proposed language disregards the corporate form and would purport to make this entity liable under the Agreement even though it has no relationship to the Agreement. BellSouth's position is unreasonable and should be rejected as inconsistent with the Act and applicable law.

ISSUE TEN **Severability**

Statement of the Issue: Should the Agreement provide that it is "indivisible and nonseverable" such that all of the provisions of the contract must be valid or the entire contract is invalid?

Applicable Contract Sections General Terms, Section 16

Level 3's Position

No. The provisions of the Agreement should be severable. If a provision is found to be invalid, then the remaining provisions should not be affected by the holding of invalidity.

BellSouth's Position

Yes. All provisions of the Agreement are "indivisible and nonseverable" and must be taken as a "single whole."

Basis for Level 3's Position

Especially in this rapidly changing regulatory environment, the provisions of the Agreement should be severable. This is accepted practice in the industry and is the practice contained in other interconnection agreements entered by BellSouth. If a provision is found to be invalid, then the remaining provisions should not be affected by the holding of invalidity, provided that the Parties attempt to reformulate the invalid provisions to give effect to such portions thereof as may be valid without defeating the intention of the provision. BellSouth, on

⁴⁴ Software Spectrum, Inc. is a global business-to-business software services provider that markets and provides enterprise software management that help organizations increase business value from information technology.

the other hand, has proposed language that would make the provisions of the Agreement “indivisible” and “nonseverable.” The result of adopting BellSouth’s language would be that if one provision of the Agreement is found invalid, the entire Agreement would be invalid and the Parties would have to renegotiate an entire new agreement.⁴⁵

In the continually evolving and changing legal environment surrounding the telecommunications industry it is inevitable that some provision of the Agreement will likely be rendered invalid during the term of the Agreement due to a change in law. For this reason, Parties to an interconnection agreement typically include a change-in-law provision to address such changes. Under BellSouth’s proposed language, however, such a change in law would invalidate the entire Agreement and waste the enormous resources the Parties, and potentially the Authority as well, invested in establishing the Agreement in the first instance. Level 3’s position is more reasonable in that it seeks to conserve resources by preserving the validity of the terms that are not implicated and the overall validity of the Agreement, while forcing the Parties to negotiate to address any invalidity or change in law under sections 14.3 and 16 of the Agreement.

In addition, BellSouth’s proposed language is inconsistent with federal law because it seeks to undermine Section 252(i) of the Act and FCC Rules 51.809(a)-(c) by precluding other requesting carriers from exercising their “pick-and-choose” rights to adopt portions of the Agreement.⁴⁶ The FCC’s “pick-and-choose” rule provides that ILECs must permit third party

⁴⁵ If such an approach were to be endorsed, the TRA would likely be inundated with demands to arbitrate interconnection agreements. Furthermore, it would deprive competing carriers of the certainty of price, terms and conditions for the duration of any interconnection agreement. Such uncertainty would raise the risks on these competing firms, likely causing expectations of higher returns on investment from shareholders and investors. Again, this is further manifestation of BellSouth monopoly behavior attempting to create disadvantages for its competitors.

⁴⁶ 47 U.S.C. §252(i), 47 C.F.R. § 809(a)-(c)

requesting carriers to obtain access “without unreasonable delay” to “any *individual* interconnection, service, or network element arrangement contained in any agreement to which [the ILEC] is a party that is approved by a state commission pursuant to section 252 of the Act ”⁴⁷ The “pick-and-choose” rules were upheld by the U S Supreme Court which noted that the FCC’s interpretation of Section 252(i) as embodied in its rules was reasonable and in fact the “most readily apparent” reading of Section 252(i) because it closely tracks the statutory text ⁴⁸

Notwithstanding these clear tenets of federal law, BellSouth proposes contract language that characterizes every provision of the Agreement as “indivisible,” “nonseverable” and part of a “single whole” so that no third party carrier may adopt a portion of the Agreement as permitted under Section 252(i) and the FCC’s rules. This is nothing but a bald-faced attempt to circumvent its obligations to permit the exercise of “pick-and-choose” rights. Accordingly, the Authority should reject BellSouth’s language because it is commercially unreasonable and contrary to governing federal law and adopt Level 3’s language.

ISSUE ELEVEN: Deposits

Statement of the Issue: Are the deposit policies proposed by BellSouth warranted and sufficiently narrow and unambiguous to prevent discriminatory or anticompetitive application?

Applicable Contract Sections: Attachment 7, Sections 1 8, 1 8 1, 1 8 2, 1 8 3, 1 8 4, 1 8 5

Level 3’s Position

No. The deposit policies proposed by BellSouth are unwarranted and overreaching, providing BellSouth with ample opportunity to engage in discriminatory and anticompetitive behavior to Level 3’s detriment.

BellSouth’s Position

⁴⁷ 47 C F R § 809(a)-(c) (emphasis added), *Local Competition Order*, at 16139, ¶ 1314

⁴⁸ *Iowa Utilities Board v FCC*, 525 U S 366, 396 (1999)

Yes The deposit policies proposed by BellSouth are necessary to ensure payment and avoid nonpayment

Basis for Level 3's Position

BellSouth seeks unilateral discretion to increase, with no limit, Level 3's security deposit and to terminate service if Level 3 fails to meet BellSouth's demands Such unilateral discretion has already been reviewed by the FCC and found unwarranted, unreasonable, and unjust In its *Policy Statement*,⁴⁹ the FCC determined that deposit policies similar to those proposed herein by BellSouth are overly broad, "imposing undue burdens on access customers" ⁵⁰

Acknowledging the impact of the telecommunications bankruptcies, the FCC nonetheless concluded that concerns over an increased risk of nonpayment did not outweigh the potential harm to carrier-customers The FCC recommended that the incumbent LECs propose "narrower protections such as accelerated and advanced billing" ⁵¹

BellSouth proposes to impose an increased security deposit on Level 3 regardless of Level 3's payment history or established credit Under its proposal, BellSouth, based on its "sole opinion" and discretion, may demand additional security and/or "file a Uniform Commercial Code security interest in Level 3's accounts receivable and proceeds" Moreover, if BellSouth determines that Level 3 has failed to meet such additional security demands, BellSouth may

⁴⁹ *Verizon Petition for Emergency Declaratory and Other Relief*, Policy Statement, WC Docket No. 02-202, FCC 02-337 (rel. December 23, 2002) ("Policy Statement") Soon after Verizon filed its Petition, BellSouth filed tariff Transmittal No. 657, proposing new security deposit provisions BellSouth Telecommunications, Inc., Tariff FCC No. 1, Transmittal No. 657 (July 19, 2002) The FCC suspended Transmittal No. 657 for five months and initiated an investigation to determine whether the new provisions were "unjust, unreasonable or unreasonably discriminatory in violation of sections 201 and 202 of the Act" BellSouth Telecommunications, Inc., Tariff FCC no. 1, Transmittal No. 657, Order, DA 02-2318 (2002) Subsequent to the release of the FCC's *Policy Statement*, BellSouth voluntarily withdrew its tariff

⁵⁰ *Id.* at ¶ 6

⁵¹ *Id.* at ¶ 30

terminate service to Level 3. BellSouth's proposal would also allow Bellsouth unilaterally to terminate service to Level 3 if a state commission, reviewing a deposit dispute between the Parties, failed to resolve such dispute within 60 days. It is absurd to require a trigger for termination that is wholly beyond Level 3's control. On their face, the terms of BellSouth's proposal are unreasonable and unjust.

Level 3's proposal would require the completion of a BellSouth Credit Profile and allow the Parties to negotiate a security deposit if BellSouth determines that a security deposit or increase in a security deposit is necessary, based on the results of its credit analysis. Level 3 further proposes that if the Parties cannot reach agreement on the security deposit, either Party may petition a state commission within 45 days. This proposal is a significant compromise considering the FCC's *Policy Statement* and previous FCC decisions on security deposits. In its *Access Tariff Order*, the FCC permitted the collection of a deposit *only* when a carrier had a proven history of late payment or no established credit.⁵²

C. REMAINING ISSUES WITHIN THE AGREEMENT (TIER III)

The Tier III issues concern language within the agreement that requires modification so that the agreement is internally consistent, commercially reasonable, and in compliance with applicable laws. Level 3 does not believe that there is a significant degree of disagreement between the Parties as to these issues. Level 3 hopes and expects that the Parties will be able to resolve most of the Tier III issues through further negotiations prior to hearing. However, in order to preserve its rights, Level 3 provides a brief summary (with references to applicable

⁵² *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I Order, 97 FCC 2d 1082, 1169 (1984), *Annual 1987 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd 280, 304, 318 (1986) ("*Access Tariff Order*")

contract sections) of each Party's position on the remaining issues. Level 3 presents these issues in the order contained in the Agreement (by Attachment)

GENERAL TERMS AND CONDITIONS

ISSUE GT-1 (General Terms and Conditions, Definitions, page 1) The Parties have been unable to agree on specific definitions within the Agreement. Specifically, Level 3 proposes to include an overarching provision that all definitions are subject to changes in law. This would allow for further refinements and changes automatically, without a formal amendment each and every time a change in law results in a revised definition. Level 3 understands that BellSouth wants to copy word-for-word the definitions currently in the Act, subject to a formal amendment process should those definitions be revised through a change in law.

ATTACHMENT 1 (Resale)

ISSUE 1-1 (Attachment 1, Section 3.5, page 5) The Parties have not been able to reach agreement on the use of Customer Proprietary Information. Level 3 has inserted language that states both Parties will comply with the Act and applicable rules. BellSouth disagrees with the insert.

ISSUE 1-2 (Attachment 1, Section 3.6, page 5) Level 3 has proposed to make clear that neither of the Parties has proprietary rights to telephone numbers. Moreover, because both Parties are LECs subject to Section 251(c)(2), any limitations or rights concerning numbers should be reciprocal. BellSouth disagrees with both of Level 3's proposals.

ISSUE 1-3 (Attachment 1, Section 3.6, page 5) The Parties have been unable to agree upon BellSouth's reservation of rights as it pertains to changing numbers when BellSouth deems it necessary.

ISSUE 1-4 (Attachment 1, Section 3 13, page 6) The Parties have been unable to agree upon language concerning the unauthorized use of resold services

ISSUE 1-5 (Attachment 1, Section 5 7, page 10) The Parties have not been able to agree on language that would prevent BellSouth from marketing its services to Level 3 end users in the context of a maintenance call Level 3 has inserted a proposal to restrict such marketing, which BellSouth has stricken

ATTACHMENT 2 (Network Elements)

ISSUE 2-1 (Attachment 2, Section 1 8, page 4) The Parties have been unable to agree on BellSouth's right to terminate elements no longer required under the Agreement Level 3 proposes that where elements or combinations of elements are available, that it has 30 days or such transition period as permitted by law or as the parties mutually agree to complete a rearrangement or disconnection of the service BellSouth rejects this change and insists that it have the sole right to terminate services without notice if orders to rearrange or terminate services are not received within 31 days after the Effective Date of this Agreement

ISSUE 2-2 (Attachment 2, Sections 1 8 1, 2 8 2 9, pages 4, 23) The Parties have been unable to agree on whether, in the event of a change in FCC unbundling requirements, Applicable Law controls Level 3 proposes that Applicable Law controls in the event of a change in law BellSouth has rejected Level 3's proposal Level 3 responded with a proposal that the Parties resolve any differences with regard to a change in law via the dispute resolution provisions of the Agreement BellSouth has yet to indicate whether it will accept or reject Level 3's subsequent offer

ISSUE 2-3 (Attachment 2, Section 2 1 1 4, pages 7-8) The Parties have not been able to agree on BellSouth's obligations to provide access to fiber-to-the-home ("FTTH") overbuilds

Level 3 believes that BellSouth should provide access to Loop orders in an FTTH overbuild area according to BellSouth's standard Loop provisioning interval. BellSouth flatly rejects this request and insists that each loop order will be handled on a project basis, which means that the Parties must negotiate the applicable provisioning intervals.

ISSUE 2-4 (Attachment 2, Section 2.1.4, page 8) The Parties have not been able to agree on language concerning BellSouth's obligations to provide access to loop test points. Level 3 proposes language that clearly states that BellSouth must provide access to physical loop test points on a nondiscriminatory basis for purposes of loop testing, maintenance and repair activities. BellSouth rejects this change.

ISSUE 2-5 (Attachment 2, Section 2.3.8, page 14-15) The Parties have not been able to agree on language concerning BellSouth's obligations to provide unbundled DS-3 transport. Level 3 proposes to clarify that DS-3 transport may be provisioned over fiber optic transport systems as well as through a metallic-based electrical interface. BellSouth rejects Level 3's change.

ISSUE 2-6 (Attachment 2, Section 2.5.1, page 18) The Parties have been unable to agree on whether Level 3 should be required to pay BellSouth's costs of conditioning lines at TELRIC rates according to FCC and Authority rules. Level 3 requests that BellSouth agree that to the extent BellSouth seeks to recover the costs of Line Conditioning from CLECs, all rates shall conform to Section 252(d)(1) of the Act and FCC rule 51.507(e). 47 C.F.R. § 51.507. BellSouth rejects Level 3's clarification.

ISSUE 2-7 (Attachment 2, Section 2.5.2, page 18) The Parties have been unable to agree on whether BellSouth should remove load coils only on copper loops and sub-loops that are less than 18,000 feet in length. Level 3 submits that because technology is continually

improving DSL capabilities, BellSouth should remove load coils on any copper loops under BellSouth ownership or control BellSouth disagrees

ISSUE 2-8 (Attachment 2, Section 2 5 4, page 18) The Parties have been unable to agree on whether BellSouth should condition loops by removing bridged tap at TELRIC rates or at BellSouth's tariffed Special Construction rates Level 3 proposes that BellSouth provide that loop conditioning services according to FCC and Authority orders that require such conditioning be provided at TELRIC rates BellSouth disagrees

ISSUE 2-9 (Attachment 2, Section 2 8 2 1, page 21-22) The Parties have been unable to agree on the scope of BellSouth's obligations to offer Unbundled Sub-Loops ("USL") in Multi-Tenant environments ("MTE") and multiunit premises Level 3 seeks clarification of BellSouth's obligations by proposing language that directly tracts the UNE TRO Order language requiring that ILECs make unbundled subloops for multiunit premises and MTEs available to requesting carriers regardless of the capacity level or type of loop provided to the customer at that premises and without requiring that Level 3 collocate to access that subloop BellSouth has rejected Level 3's changes Instead, BellSouth seeks to impose unbundling obligations on Level 3 for intra-building cabling despite the fact that Level 3 has no such obligations under state or federal law, the FCC has already disposed of how that wiring is handled between ILECs and CLECs in its October 2000 Competitive Networks Order⁵³

⁵³ *Promotion of Competitive Networks in Telecommunications Markets, Wireless Communications Association International, Inc., Petition for Rulemaking to Amend Section 1 4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68 104, and 68 213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, 15 F C C R 22983 (2000) ("Competitive Networks Order")* (Carriers cannot enter into exclusionary contracts that prevent other carriers from accessing customers located in MTES, MTE owners have the right to relocate the demarcation point for ILEC (Cont'd)

ISSUE 2-10 (Attachment 2, Section 2 8 3 *passim*, page 23) The Parties cannot agree on BellSouth's obligations to unbundled "network terminating wire" which is wire that BellSouth contends is unshielded twisted copper wiring that is used to extend circuits from an intra-building network cable terminal or from a building entrance terminal to an individual End User's point of demarcation Level 3's position is that BellSouth is obligated to unbundle this wire to the demarcation point BellSouth insists that unbundling requirements should also apply to wire owned by Level 3 Level 3 denies that it has such an obligation

ISSUE 2-11 (Attachment 2, Sections 2 8 6 3 1, 6 4 3 1 , pages 27, 53) The Parties cannot agree on the extent to which BellSouth should make unbundled dark fiber loops or transport available Level 3's position is that there should be some reasonable limit on the amount of dark fiber loops or transport in any particular route that BellSouth can reserve to itself for future orders and for maintenance spares Otherwise, BellSouth can by fiat and without any regulatory oversight, eliminate dark fiber as a UNE by simply reserving 100% of the remaining strands regardless of its actual needs Level 3 proposed that BellSouth be permitted to reserve up to a maximum of 8% of available fiber loop strands for maintenance and repair purposes Level 3 also proposes that reservation of dark fiber strands for future orders be limited to a twelve month planning period BellSouth's position is that there should be no limitation on reserves

ISSUE 2-12 (Attachment 2, Section 2 9 1 5, page 28) The Parties cannot agree on language dealing with the situation, though remote, where installed equipment of Level 3 allegedly significantly degrades other services Level 3 has inserted language that tracks and incorporates the process in FCC rule 51.233 47 C.F.R. § 51.233 BellSouth disagrees

owned wire to the MPOE Moreover, inside wire is deregulated and therefore, no commission can exercise jurisdiction over it within the confines of an interconnection agreement)

ISSUE 2-13 (Attachment 2, Section 5 2 6, page 46) The Parties cannot agree on the extent of the charges BellSouth may impose upon Level 3 where BellSouth audits Level 3's orders for Enhanced Extended Links ("EELs") Level 3 offered to agree to pay for any reasonable and demonstrable charges that BellSouth incurred where an audit revealed noncompliance with the FCC's rules on EELs usage BellSouth's position is that there can be no limitation on the charges it may impose upon Level 3 for such audits

ISSUE 2-14 (Attachment 2, Section 5 4 1, 5,4,2, pages 48) The Parties cannot agree on whether the rates imposed by BellSouth for unbundled network elements made available pursuant to the Agreement and state and federal law should be consistent with Section 251(d)(1) of the Act Level 3 asserts that Section 251(d)(1) should govern UNE rates BellSouth disagrees and rejects Level 3's insertion of the qualifying phrase "consistent with Section 251(d)(1) of the Act "

ISSUE 2-15 (Attachment 2, Section 6 1 1 1, page 48) The Parties cannot agree on whether BellSouth's Dedicated Transport should terminate to reverse collocation arrangements within the same LATA Level 3 asserts that under the FCC's orders, Level 3 may access BellSouth Dedicated Transport that has an endpoint at a BellSouth reverse collocation arrangement Accordingly, dedicated transport should also terminate to BellSouth collocation arrangements within Level 3 collocation facilities BellSouth disagrees and rejects Level 3's proposed language

ISSUE 2-16 (Attachment 2, Section 6 4 3 3, page 54) The Parties cannot agree on whether BellSouth should provide Level 3 with additional information when BellSouth rejects an order for Dark Fiber Transport because BellSouth determines that facilities are not available Level 3 proposes that BellSouth provide information concerning the reason for rejection, amount

of fiber reserved by BellSouth, and information revealing whether additional strands might be made available pursuant to a routine network modification or other means. BellSouth's position is it should not be required to provide any such information.

ISSUE 2-17 (Attachment 2, Section 7.1, page 54) The Parties cannot agree on whether in its description of unbundled databases, BellSouth should include a reference to 911 and E911 databases. Level 3 proposed a sentence requiring that BellSouth provide non-discriminatory access to 911 and E911 databases on an unbundled basis as required by FCC rule 51.319(f). 47 C.F.R. § 51.319. BellSouth believes that no such clarification is necessary.

ATTACHMENT 3 (Interconnection)

ISSUE 3-1 (Attachment 3, Section 4.10.4.1.2) Level 3 has proposed that the language covering routing of Toll Free calls be made mutual. BellSouth disagrees and proposes that the routing language apply only to Level 3.

ATTACHMENT 7 (Billing)

ISSUE 7-1 (Attachment 7, Section 1.2, Page 4) Level 3 proposed language that would set firm dates for the receipt of information from BellSouth concerning account setup. BellSouth added language that would require Level 3 to use only an existing Master Account in order to avoid submitting an additional application before placing orders under the new agreement.

ISSUE 7-2 (Attachment 7, Sections 1.2.2 and 1.3, Pages 4-5) Level 3 proposed language that would make the payment responsibility portion of the agreement reciprocal. Level 3 also added text that would require payment only of "undisputed charges." BellSouth's proposed text would remove the language establishing reciprocity and would also strike any reference to "undisputed" charges such that Level 3 would be required to pay BellSouth those charges it disputes.

ISSUE 7-3 (Attachment 7, Section 1 5, Page 5) Level 3 proposes to make the language concerning verification of tax exemption status reciprocal BellSouth disagrees

ISSUE 7-4 (Attachment 7, Section 1 6, Page 6) Level 3 proposes to make the late payment language reciprocal and to have late charges apply only to undisputed portions of a bill Level 3 added text that would calculate the late factor assessed by Level 3 on BellSouth according to Level 3's intrastate access tariff BellSouth rejects Level 3's proposed revisions to this section

ISSUE 7-5 (Attachment 7, Sections 1 7 1, Page 6) Level 3 proposes a number of revisions that would restrict BellSouth's ability to suspend or terminate service to Level 3 First, Level 3 proposes that BellSouth provide a minimum of 7 days' prior written notice before suspending or disconnecting service for alleged improper or illegal use of BellSouth's facilities Second, Level 3's language allows for cure within the 7 day notice period allowing Level 3 to avoid suspension or disconnection BellSouth disagrees with Level 3's proposal

ISSUE 7-6 (Attachment 7, Sections 1 7 2, Pages 6-7) When service would be suspended due to non-payment, Level 3 proposes to extend the effective date of suspension or termination of service based on notice of such non-payment from 15 to 30 days or whatever the applicable timeframe is established by state commissions for disconnecting customers Level 3 also added the qualifier that suspension or termination for nonpayment of services would be limited to undisputed amounts Level 3 also proposes to reserve the right to avoid suspension or disconnection if the Company cures the nonpayment of undisputed amounts within 30 days BellSouth disagrees

ISSUE 7-7 (Attachment 7, Section 2 2, Pages 9-10) Level 3 proposes that a Party may withhold disputed amounts until the dispute is resolved and that the billed Party is absolved of

any liability for associated late charges if the dispute is ultimately settled in its favor. BellSouth disagrees with Level 3's proposals and proposes ambiguous language about following "normal treatment procedures" and resolving disputes in accordance with Section 2. Level 3 rejects BellSouth's proposals as vague and ambiguous.

ISSUE 7-8 (Attachment 7, Section 2.3, Page 10) BellSouth has deleted language that would set the late payment charge according to Section 1.6 of Attachment 7. BellSouth prefers instead to reference a number of different tariffs and to remain silent on what late factor Level 3 would apply to any delinquent BellSouth bills. BellSouth struck Level 3's language that would restrict BellSouth's ability to assess interest on late payment charges to only those states where it has the authority to do so pursuant to tariff. Also, BellSouth has stricken language that would provide for a credit plus interest of the payment of any disputed charges where the disputing party prevails.

ISSUE 7-9 (Attachment 7, Section 3.4, Page 11) The parties disagree as to the timeframe for providing information necessary to establish a unique hosted RAO code. Level 3 proposes a six (6) week timeframe while BellSouth proposes eight (8) weeks.

ISSUE 7-10 (Attachment 7, Section 3.15, Pages 12-13) Level 3 included language that would require BellSouth to process the conforming portion of EMI data in the event that some of the data cannot be processed due to uncorrectable errors. It is unclear what BellSouth's position is on this issue.

ISSUE 7-11 (Attachment 7, Sections 4.6, 5.5 and 6.6, Pages 14, 17, 19) Level 3 has added language that would require BellSouth to work with Level 3 to determine the source of significant volumes of errored messages in certain usage files that are necessary for Level 3 to accurately issue bills. BellSouth has deleted Level 3's proposed language.

ATTACHMENT 11 (Bona Fide Request)

ISSUE 11-1 (Attachment 11, Sections 1 1, 1 1 1, 1 1 2, 1 2 and 1 9, pages 1 and 4) The Parties have not been able to agree upon language that covers instances when, through FCC or Authority generic orders or prior provisioning, BellSouth is required to offer various network elements and options that are not already covered in this Agreement. Additionally, the Parties have not been able to agree upon language to utilize previous information on BFRs to expedite the process and reduce costs related to Development Rates or Complex Evaluation Fees. Level 3 has proposed language, and BellSouth has rejected the language, along with any references to the proposal, in their entirety.

ISSUE 11-2 (Attachment 11, Section 1 3, page 2) The Parties have not been able to agree upon language to ensure that BellSouth understands the BFR that Level 3 has submitted, and to inform Level 3 if similar requests have been submitted by other parties. BellSouth has rejected Level 3's proposal.

ISSUE 11-3 (Attachment 11, Sections 1 5, 1 6 and 1 10, pages 2-4) Level 3 struck language that limits preliminary analyses' results to those elements and options not ordered by the FCC or the Authority. BellSouth wishes to keep the stricken language.

Issue 11-4 (Attachment 11, Section 1 9, page 4) Level 3 has struck a "notwithstanding" provision that details BellSouth's proposal of firm rates and an implementation plan. BellSouth wishes to keep the stricken language.

ISSUE 11-5 (Attachment 11, Sections 1 10 and 1 12, pages 4 and 5) The Parties have not agreed upon language that reserves Level 3's rights to pursue dispute resolution in accordance with the Agreement on any aspect of the BFR, including costs. Level 3 also

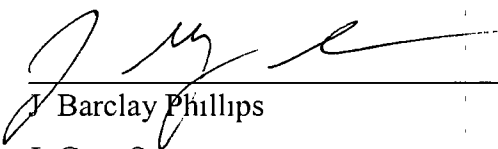
proposed language guaranteeing that BellSouth will process a BFR regardless of a dispute
BellSouth rejected Level 3's proposed language

VI. CONCLUSION AND PRAYER

Level 3 requests that the Authority arbitrate the unresolved issues described above and resolve them in Level 3's favor. Level 3's contract proposals are consistent with the law and commercially reasonable. Level 3 requests that the Authority adopt its contract language contained in Exhibit B.

Respectfully submitted,

LEVEL 3 COMMUNICATIONS, LLC

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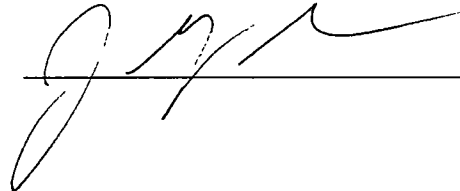
Its Attorneys

Dated February 20, 2004

CERTIFICATE OF SERVICE

I, J Gray Sasser, certify that a copy of the foregoing Petition of Level 3 Communications, LLC for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Tennessee Telecommunications Act of 1995 for Rates, Terms, and Conditions of its Interconnection Agreement with BellSouth Telecommunications Inc was served by hand delivery(*), or facsimile, on the twentieth_of February, 2004 on the following

Guy M Hicks
BellSouth Telecommunications, Inc
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

A handwritten signature in dark ink, appearing to read "Guy M Hicks", is written over a horizontal line.